

CRIMINAL REVISION NO.1711 OF 2007

DATE OF DECISION: DECEMBER 20, 2007

Kartar Singh

.....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. J. C. Verma, Sr.Advocate with
Ms. Meenakshi Verma, Advocate,
for the petitioner.

Mr. Shailesh Gupta, DAG, Punjab,
for the State.

RANJIT SINGH J.

Vijay Kumar and others are being prosecuted for offences under Sections 307, 341 etc. IPC, on the basis of allegation made in FIR No.17 dated 24.1.2005. This FIR was lodged by Raj Kumar not only against the persons being prosecuted but also against one Kartar Singh (the present petitioner), who was found innocent during investigation by police.

Raj Kumar appeared to give evidence before the Court on 14.3.2006. He stated before the Court that accused attacked his father with base-bat and Churi (knife) and that base-bat used by accused Kartar Singh to injure his father had broken and fallen at the spot. Once the examination-in-

chief of Raj Kumar was over, the prosecution moved an application under Section 319 Cr.P.C. for summoning petitioner, Kartar Singh as an additional accused to be tried with the remaining accused already facing prosecution. The Additional Sessions Judge, Jalandhar, has allowed this application and summoned the petitioner to face prosecution in this case alongwith other accused. Kartar Singh, petitioner, accordingly has filed this revision to impugn the said order dated 21.8.2007.

Learned counsel for the petitioner has raised more than one submissions to challenge the impugned order. It is first contended that the summoning of the petitioner before conclusion of the cross-examination of the witness is not permissible. In this regard, he has referred to the case of **Mohd. Shafi Vs. Mohd. Rafiq and another**, 2007 (2) RCR (Criminal) 762. This was a case where the application was moved before the trial Court for summoning an additional accused. The trial Court noticed that till then a witness had only been examined in-chief and declined to accept the application at that stage. This order was impugned before the High Court, which allowed the petition and set-aside the order passed by the trial Court. The same was impugned before the Hon'ble Supreme Court and in this background, it is held:-

“From the decisions of this Court, as noticed above, it is evident that before a Court exercises its discretionary jurisdiction in terms of Section 319 of the Code of Criminal Procedure, it must arrive at the satisfaction that there exists a possibility that the accused so summoned is in all likelihood would be convicted. Such satisfaction

can be arrived at inter alia upon completion of the cross-examination of the said witness. For the said purpose, the court concerned may also like to consider other evidence. We are, therefore, of the view that the High Court has committed an error in passing the impugned judgment. It is accordingly set-aside. The appeal is allowed.”

The ratio that can be culled out from the above observation of the Hon’ble Supreme Court is that no exception can be taken where the trial Court is of the view that the application should receive its consideration only after conclusion of the cross-examination. It is the discretion to be exercised by the trial Court and if the Court is of the view that such discretion should only be exercised after conclusion of cross-examination of a witness, obviously there can not be any exception to this approach. From this and the above observation of the Hon’ble Supreme Court, it would not be possible to view that any binding precedent is being set in this judgment that additional accused can only be summoned upon conclusion of the cross-examination of a witness. The High Court order was set-aside with the observation that no exception can be taken where the trial Court wishes to arrive at its satisfaction after the cross-examination is over. Rather, the Hon’ble Supreme Court, in the case of **Rakesh and anr. Vs. State of Haryana**, AIR 2001 SC 2521 has categorically held that it was difficult to hold the contention that prime evidence as used in Section 319 Cr.P.C. would mean evidence which is tested by cross-examination. As per the Hon’ble Court, the question of testing the evidence by cross-examination would arise only after addition of the accused. The contention raised

before the Hon'ble Supreme Court in the case of Rakesh (supra) was precisely to this effect, as can be seen from Para 3 of the judgment, which is as under:-

“Learned senior counsel Mr.Ranjit Kumar submitted that the High Court materially erred in dismissing the revision application filed by the appellants and submitted that the term ‘evidence’ mentioned in Section 319 in reference would mean examination-in-chief and cross examination of the witnesses. It is his contention that in a case where the name of the accused is mentioned in the FIR and after investigation in the report submitted by the Investigating Officer, the said person is not added as accused and the case is committed to the Sessions Court, before adding that person as an accused, the Sessions Court ought to have permitted cross examination of the witnesses. He referred to halsbury’s Laws of India, 1st Edition, Volume 15, in paragraph 145.242, wherein it has been stated:

“The mere statement of the plaintiff’s witnesses cannot constitute the plaintiff’s evidence in the case unless and until it is tested by cross-examination. The right of the defence to cross-examine the plaintiff’s witnesses can, therefore, be looked upon not as a part of its own strategy of defence but rather as a requirement without which the plaintiff’s evidence cannot be acted upon. (emphasis supplied). “

Referring to the case of **Ranjit Singh Vs. State of**

Punjab, 1998 (4) RCR (Crl.) 552 (SC), the Supreme Court observed that Section 319 Cr.P.C. contemplates existence of some evidence appearing in the course of trial from where the Court can prima-facie conclude that the person arrayed before it is also involved in the commission of crime for which he can be tried with those already named by the police. In this case, the Hon'ble Supreme Court clarified that "of course it is not necessary for the Court to wait until the entire evidence is collected for exercising the said powers." Having so observed, the Hon'ble Supreme Court held that it is difficult to accept the contention that evidence as used in Section 319 Cr.P.C. would mean evidence, which is tested by cross-examination. In this regard, the Hon'ble Supreme Court held as under:-

"Hence, it is difficult to accept the contention of the learned counsel for the appellants that the term, 'evidence' as used in Section 319 Criminal Procedure Code would mean evidence which is tested by cross-examination. The question of testing the evidence by cross-examination would arise only after addition of the accused. There is no question of cross-examining the witness prior to adding such person as accused. Section does not contemplate an additional stage of first summoning the person and giving him an opportunity of cross-examining the witness who has deposed against him and thereafter deciding whether such person is to be added as accused or not. Word "evidence" occurring in sub-section is used in comprehensive and broad sense which would also include the material collected by the

investigation officer and the material or evidence which comes before the Court and from which the Court can prima facie conclude that person not arraigned before it is involved in the commission of the crime.”

This plea raised by the petitioner, as such, can not be accepted. It is otherwise logical to say so. It is to be noticed that the additional accused would be unrepresented before the Court till added and any cross-examination of the witness can not be at his instance and has to be on behalf of same accused already facing trial.

The counsel would further contend that before summoning, the Court was bound to apply its mind and could have summoned the petitioner as an additional accused only if there is a reasonable prospect of conviction of the offence charged. In this regard, learned counsel would refer to the case of **Michael Machado Vs. Central Bureau of Investigation**, 2000(2) RCR (Cri.) 75 (SC) and other judgments of this Court in the cases of **Ganesh Vs. State of Haryana and another**, and **Ram Karan alias Roda and another Vs. State of Haryana**, 2007 (1) RCR (Criminal) 977. The ratio that can be culled out from Michael Machado's case (supra) is that summoning can not be ordered only on the basis of a suspicion and that additional accused is to be summoned when there is a reasonable prospect of his conviction for an offence charged. This Court in the case of Ram Karan alias Roda (supra), after discussing different judgments of Hon'ble Supreme court held as follows:-

“The analysis of the judgment aforementioned would show that discretion regarding summoning a person as

an additional accused is not to be exercised in routine. This should be exercised sparingly and when done should be by passing a reasoned order. This Section leaves a discretionary power with the court and is not to be exercised when some doubt is entertained but should be so done after reasonable circumstances emerge from the evidence already collected. It has also been held that there is no compelling duty of the court to proceed against any person. Suspicion alone is not sufficient to summon the accused and he should be so summoned when there is reasonable prospect of convicting him of the offence charged. As already noticed, Hon'ble Supreme Court has observed that power under this provision is to be exercised to advance the cause of criminal justice."

It is to be seen in this context whether the petitioner has been rightly summoned in view of the ratio of law laid down in the above noted judgment or not. I have already held that there is no legal requirement to wait conclusion of the cross-examination before considering the aspect of summoning a person as an additional accused. The evidence given by Raj Kumar, complainant, against the petitioner is clear, categorical and direct. In the FIR, the complainant alleged as under:-

"I returned to see my father and found at a distance of 150 yards in the street of temple Avtar Singh son of Shankar Singh having base bat, Jagdish son of Chuni Lal having base bat, Sonu having Chhuri Kala s/o Shankar Singh having Chhuri and Kartar Singh s/o Sodal having

base bat, Manjit Kaur w/o Avtar Singh, Kamaljit @ Bholi w/o Jagdish, Parkash Kaur r/o Bhargo Camp surrounded my father and were causing injuries with base bat and Chhuris.”

While appearing before the Court, the witness has stated as under:-

“The base bat used by accused Kartar Singh to injure my father had got broken and fallen on the spot.”

Prima-facie, it can be said that this evidence would satisfy the requirement as set down in various judgments including Michael Machado (supra) for adding the petitioner as an additional accused.

Accordingly, I do not find any infirmity in the impugned order and as such, would dismiss the revision petition.

December 20,2007

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**(RANJIT SINGH)
JUDGE**